



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Washington State Patrol

☒ Permanent Rule
☐ Emergency Rule

Effective date of rule:

Permanent Rules

☒ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☐ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose:

This WAC has not been updated since the original language was adopted in December 1998, and it is necessary to make changes to stay current with technological advances.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 204-50 Ignition Interlock Breath Alcohol Devices

Suspended:

Statutory authority for adoption: RCW 46.61.688 (2)

Other authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 05-12-049 on May 26, 2005 (date).

Describe any changes other than editing from proposed to adopted version: No changes were made to the proposed text.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted:

8/11/05

NAME (TYPE OR PRINT)

John R. Batista

Paul S. Beckley

SIGNATURE

Paul S. Beckley

CODE REVISER USE ONLY
STATE OF WASHINGTON
FILED

AUG 11 2005

TIME

1221

WSR

05-17-065

AM

PM

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New _____ Amended _____ Repealed _____

The number of sections adopted in the agency's own initiative:

New 1 Amended _____ Repealed _____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New _____ Amended _____ Repealed _____

The number of sections adopted using:

Negotiated rule making:	New	<u>1</u>	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-030 Definitions ~~((for words or terms used in this chapter))~~. The following definitions shall apply throughout this chapter:

Alcohol - The generic class of organic compounds known as alcohols and, specifically the chemical compound ethyl alcohol. For the purpose of ignition interlock devices, there is no requirement expressed or implied that the device be specifically for ethyl alcohol.

~~((Approved))~~ Authorized service provider (ASP) - The person or company ~~((who is approved by ESR))~~ meeting all qualifications outlined throughout this chapter and approved and trained by the manufacturer to service, install, monitor, calibrate, and provide information on ((a)) manufacturer's devices ((based on certification to ESR by the manufacturer that the person or company is qualified and is properly trained to provide these services)) currently certified for use in Washington state.

Bogus sample - Any air sample that is altered, diluted, stored, or filtered human breath, or which is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanical device, and is provided by an individual attempting to start or continue to operate a vehicle equipped with a device.

Ignition interlock device (IID) - An electronic device that is installed in a vehicle which requires the taking of a BAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the unit detects a BAC test result below the alcohol setpoint, the unit will allow the vehicle's ignition switch to start the engine. If the unit detects a BAC test result above the alcohol setpoint, the vehicle will be prohibited from starting.

Breath or blood alcohol concentration (BAC) - ~~((In this chapter means))~~ Is the amount of alcohol in a person's blood or breath determined by chemical analysis, which shall be measured by grams of alcohol per:

- (a) 100 milliliters of blood; or
- (b) 210 liters of breath.

Circumvention - Means the attempted or successful bypass of the proper functioning of an ignition interlock device including, but not limited to, the operation of a vehicle without a properly functioning device, the push start of a vehicle with the device, disconnection or alteration of the

device, the introduction of a bogus sample other than a deep-lung sample from the driver of the vehicle, introduction of an intentionally contaminated or altered breath sample, continued operation of the interlock vehicle after the device detects excess breath alcohol.

Court (or originating court) - The particular Washington state court, if any, that has required the use of an ignition interlock (~~((breath alcohol))~~) device by a particular individual or has responsibility for the preconviction or postconviction supervision of an individual required to use or using the device.

Certification - The testing and approval process required by RCW 46.04.215.

Chief - The chief of the Washington state patrol.

Device - An ignition interlock breath alcohol device (IID).

DOL - The department of licensing of the state of Washington.

ESR - The equipment and standards review (~~((section))~~) unit of the Washington state patrol.

~~((Interlock - The state in which a motor vehicle is prevented from starting by a device.))~~ Fail level - The BAC of .025 or a level set by the originating court, if lower, at which the device will prevent the operator from starting the vehicle, and/or once the vehicle is started, the level at which the operator must record a test below, or must shut off the vehicle, to avoid registering a violation reset.

Lessee - A person who has entered into an agreement with a manufacturer or (~~((approved))~~) authorized service provider to lease a device.

Manufacturer - The person, company, or corporation who produces the device, and (~~((who))~~) certifies to ESR that a service provider is qualified to (~~((become approved by ESR to))~~) service, install, monitor, calibrate, and provide information on devices.

OAC - Office of the administrator of the court.

Restricted operator - A person whose (~~((operating))~~) driving privileges (~~((is))~~) are restricted to operating only motor vehicles equipped with an approved, functioning (~~((ignition interlock device or other approved, functioning biological or technical device))~~) IID.

Tampering - Any act or attempt to disable or circumvent the legal operation of an IID.

Violation reset - The condition caused by the failure of the operator of (~~((the))~~) a vehicle(~~((s))~~) to perform a test or retest as required, or by the operator's inability to achieve such test or retest results at (~~((a level lower than))~~) the lower of the maximum allowable alcohol concentration as set by the originating court or .025 BAC, the device and the vehicle in which it is installed must be returned to the manufacturer or (~~((approved))~~) authorized service provider to be reset.

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

**WAC 204-50-040 Testing ((and)) certification ((process)),
revocation or surrender of certification and recertification.
Testing and certification.**

To be certified, a device must meet or exceed the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement, from a laboratory capable of performing the tests specified, will be accepted as proof of meeting or exceeding the standards. The notarized statement shall include the name and signature of the person in charge of the tests under the following sentence:

Two samples of (model name), manufactured by (manufacturer) were tested by (laboratory). They do meet or exceed all specifications listed in the Federal Register, Volume 57, Number 67, pages 11774 - 11787.

Signed _____

~~((A list of laboratories performing the required tests shall be maintained by the ESR.))~~

Upon receipt of a statement from a testing laboratory that two samples of a device have successfully passed the test procedures listed in this chapter, and confirmation that all other requirements of this chapter have been met, the chief ~~((shall))~~ may issue a letter of certification for the device.

Revocation or surrender of certification.

The letter of certification shall be valid until voluntarily surrendered by the manufacturer or until revoked by the chief for cause. Reasons for revocation include but are not limited to:

(1) Evidence of repeated device failures due to gross defects in design, materials, and/or workmanship during manufacture, installation, monitoring, or calibration of the device such that the standards for accuracy and reliability of the devices for which the devices were tested are not being met (as determined by ESR);

(2) Evidence that the features and functionality of a manufacturer's devices are not being programmed properly by ~~((approved service provider))~~ ASP(s) or are being circumvented by lessees such that the standards for anticircumvention for which the devices were tested are not being met;

(3) Any violation on the part of the manufacturer(s) or ~~((approved service provider))~~ ASP(s) of any of the laws or regulations related to the installation, servicing, monitoring, and calibration of devices, including, but not limited to, "other provisions" listed in WAC 204-50-120;

(4) Notice of cancellation of manufacturer's and/or ~~((approved service provider's))~~ ASP's required liability insurance is received;

(5) Notification that the manufacturer is no longer in business.

(6) Notification that material modification or alteration in the components and/or the design of the certified device is not provided or the recertification process is not completed as outlined in WAC 204-50-050.

(7) Unless necessary for the immediate good and welfare of the public, revocation shall be effective ~~((ten))~~ thirty days ~~((after manufacturer's receipt of notice, which shall be sent))~~ from the date of the letter sent to the manufacturer via certified mail, return receipt requested. A copy of each notice of revocation shall be provided to the ~~((originating court))~~ the director of the DOL and to the OAC for the state of Washington. The manufacturer's device(s) will be removed from the list of certified devices on the WSP web site.

~~((6))~~ (8) Upon voluntary surrender, or revocation of a letter of certification for a manufacturer's device, all like devices shall be removed and replaced by a certified device, ~~((not later than the end of the current calibration period))~~ within sixty-five days of the effective date of such surrender or revocation. The ASP must notify all affected lessees of decertification and the requirements for a new device to be installed by an existing ASP.

~~((7))~~ A manufacturer whose letter of certification has been revoked may request a review of revocation by submitting the request in writing to the chief within twenty days of receipt of notice of revocation.

~~((8))~~ The ESR shall maintain a file of all current, revoked, and voluntarily surrendered letters of certification.)) (9) The ESR shall maintain a file of all current, revoked, and voluntarily surrendered letters of certification for the period of time as outlined in the WSP records retention schedule.

Review for recertification.

A manufacturer whose letter of certification has been revoked may request a review of revocation by submitting the request in writing to the chief within thirty days from the date on the revocation letter. The request must be made in writing and mailed to WSP ESR Unit, P.O. Box 42614, Olympia, WA 98504-2614.

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-050 Modifications to a certified device. The manufacturer shall notify ESR, in writing, of any material modification or alteration in the components and/or the design of the certified device. ~~((Such modifications shall warrant retesting of the device to ensure the modifications or alterations do not adversely affect the ability of the device to meet the specifications adopted))~~ Within ninety days of notifying the ESR of the material modification or alteration to a certified device, the manufacturer must resubmit to ESR the evidence of compliance as required in WAC 204-50-040.

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-070 Variable calibration. To be certified, a device must be capable of being preset, by the manufacturer or by an ~~((approved service provider, to interlock when the breath sample provided is))~~ ASP, at any fail level from .02 through .09% BAC (plus or minus ~~((-.003%))~~ .005% BAC). The actual setting of each device ~~((shall be determined))~~, unless otherwise mandated by the originating court, shall be .025 BAC. The capability to change this setting shall be made secure, by the manufacturer, or by an ~~((approved service provider. As guidance for the courts, the federal specifications referred to in WAC 204-50-040 recommends an interlock level of .025 BAC for the initial test and a fail level of up to .02% higher for subsequent random retests))~~ ASP.

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-080 Device maintenance and reports. (1) Each lessee shall have the device examined by the manufacturer or by an ~~((approved service provider))~~ ASP for correct calibration and evidence of tampering at intervals not to exceed sixty-five days, or more often as may be ordered by the originating court.

~~(2) ((Examination shall include a physical inspection of the device, and its wiring, and the vehicle and its wiring for evidence of tampering or circumvention. Notation shall also be made of the vehicle's odometer reading.~~

~~(3))~~ The device must be calibrated for accuracy according to the manufacturer's procedures. All data contained in the device's memory must be downloaded ~~((into a format from which the required reports can be generated.~~

~~(4))~~ and the manufacturer and/or ((approved service provider)) the ASP shall make a hard copy or electronic equivalent of the client data and the results of each examination. Any evidence of noncompliance, violations, or signs of tampering or circumvention shall be reported ((to the originating court)) as requested by and in a format acceptable to the originating court and/or DOL. All information obtained as a result of each inspection shall be retained by the manufacturer or approved service provider for two years from the date the device is removed from the vehicle.

~~((5))~~ (3) Any ASP proposing to offer a mail-in calibration and examination program to their lessees must obtain approval from ESR prior to implementing the mail-in program. To obtain approval the ASP must submit procedures outlining how the mail-in program will work. ASP must also provide the customer with written instructions on how to utilize the mail-in program. A mail-in program does not eliminate or take the place of any requirements outlined in WAC 204-50-120.

(4) The manufacturer and/or ((approved service provider)) ASP must provide((7)) upon request ((of)), additional reports in a format acceptable to and at no cost to DOL and/or the originating court((, additional reports which may include, but are not limited to, the following: Proof of installation, removal, transfer of vehicle, vehicle information, compliance reporting, statements of charges and payments, service calls, lessee error of operation, device failure, faulty automotive equipment, and lessee demographic information. Such reports must be supplied in a format acceptable to the originating

court, and at no cost to the originating court)).

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-090 Device security. The manufacturer and its approved service provider(s) shall take all reasonable steps necessary to prevent tampering or physical circumvention of the device. These steps shall include:

(1) Special locks, seals, and installation procedures that prevent or record evidence of tampering and/or circumvention attempts.

(2) In addition, the approved service provider will affix to the device a label containing the following notation: "Warning - This device has been installed under ((court order)) the laws of the state of Washington. Attempts to disconnect, tamper with, or circumvent this device may subject you to criminal prosecution. For more information, call (insert manufacturer's or approved service provider's toll free number)."

(3) No owner or employee of a manufacturer of ASP may authorize or assist with the disconnection of a device, or enable the use of any "emergency bypass" mechanism or any other "bypass" procedure that allows a person restricted to use the vehicle equipped with a functioning ignition interlock, to start or operate a vehicle without providing all required breath samples. Doing so may subject the person to criminal prosecution under RCW 46.20.750 and may cause the revocation of a manufacturer's certification under WAC 204-50-040.

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-110 Mandatory operational features. Notwithstanding other provisions of this chapter, a certified device must comply with the following:

(1) The device shall be designed to permit a "restart" within two minutes of a stall or when the ignition has been turned off.

(2) The device shall automatically and completely purge residual alcohol before allowing subsequent tests.

(3) The device shall be installed in such a manner that it

will not interfere with the normal operation of the vehicle after it has been started.

(4) Each device shall be provided with an ample supply of disposable mouth pieces designed to minimize the introduction of saliva into the device.

(5) Each device shall be uniquely serial numbered. Along with any other information (~~((requested))~~) required by DOL or by an originating court, all reports to DOL or to an originating court concerning a particular device shall include the name, address, and driver's license number of the lessee, (~~((the name of the originating court,))~~) and the unique number of the device. The name, address, telephone number (toll free(~~((, if not a local call from the originating court))~~)), and contact person of the manufacturer or approved service provider furnishing such report shall also be included as part of the report.

(6) Each device shall record each time the vehicle is started, the results of the test, how long the vehicle was operated, and any (~~((indiction))~~) indication of bypassing or (~~((tempering))~~) tampering with the device.

(7) Each device shall require the operator of the vehicle to submit to a retest within ten minutes of starting the vehicle. Retesting shall continue at intervals not to exceed sixty minutes after the first retest. The device shall be equipped with a method of immediately notifying peace officers if the required retest(s) above is not performed, or if the result of the retest exceeds the lower of .025 BAC or the alcohol concentration as prescribed by the originating court. Examples of acceptable forms of notification are repeated honking of the vehicle's horn, repeated flashing of the vehicle's headlamps, or the wailing of a small siren. Such notification may be disabled only by switching the (~~((vehicles))~~) engine off, or by the achievement of a retest at a level the lower (~~((than))~~) of .025 BAC or the maximum allowable alcohol concentration as set by the originating court.

(8) In addition, if a retest is not performed when called for by the device, or if the operator is unable to achieve a retest at a level the lower (~~((than))~~) of .025 BAC or the (~~((a))~~) maximum allowable alcohol concentration as set by the originating court, the device shall automatically enter a violation reset condition. A device which enters a violation reset condition and the vehicle in which it is installed, must be returned to the manufacturer or (~~((approved service provider))~~) ASP to be serviced within five days or the device shall render the vehicle inoperable. The manufacturer or approved service provider shall notify the originating court (if any) of such violation reset conditions in a format acceptable to the originating court within five days of servicing the device. The manufacturer or ASP shall provide notification to DOL in a format acceptable should DOL promulgate rules requiring such

notification.

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-120 Other provisions. Notwithstanding other provisions of this chapter, each manufacturer of a certified device, either on its own or through its approved service provider(s):

(1) Shall guarantee repair or replacement of a defective device within the state of Washington within a maximum of forty-eight hours of receipt of a complaint.

(2) Shall demonstrate to the satisfaction of ESR, a service delivery plan under which any restricted operator may obtain installation and routine service of that manufacturer's device within a seventy-five mile radius of his or her place of residence. Further, shall provide ESR, a map of the state of Washington showing the area covered by each approved service provider, and the name, address, and telephone number of each approved service provider. The manufacturer shall ~~((notify))~~ provide ESR ((of)) a revised map showing any changes to its authorized service provider network within ten days of such change. Also within thirty days of any additions to the approved service provider network, provide evidence to ESR that any added ASPs have the insurance coverage as required by subsection (7) of this section.

(3) Shall maintain a twenty-four hour, three hundred sixty-five days a year toll-free telephone number for lessees to call if they have problems with the device they have leased from the manufacturer or approved service provider. Calls must either be answered by a technician qualified to service the manufacturer's devices, or the call must be returned by a qualified technician within thirty minutes of the original call.

(4) Shall provide the ~~((originating court and the))~~ lessee a statement of charges clearly specifying warranty details, monthly lease amount, any additional charges anticipated for routine calibration and service checks and what items, if any, are provided without charge. To ensure equal accessibility of the benefits of this technology to all citizens of the state of Washington, such pricing shall be uniform statewide~~((, whether in urban or rural portions of the state))~~.

(5) Shall provide the lessee written notice of any changes in the statement of charges regardless of what person or agency requested the change, prior to the implementation of such changes.

(6) Shall provide to ESR proof that the manufacturer has products liability insurance coverage with minimum liability limits of one million dollars per occurrence, and three million dollar aggregate. Liability covered shall include, but not limited to: Defects in product design ~~((and))~~, materials, ~~((as well as))~~ and workmanship during manufacture, calibration, installation, removal, and all completed operations. Such insurance must be provided by a company ~~((licensed))~~ authorized to offer such coverage in the state, and such company shall include the state of Washington as an additional insured, and shall agree to notify ESR not less than thirty days before the expiration or termination of such coverage. Insurance coverage required in this subsection must be in addition to, and not considered a replacement for coverage required in subsection (7) of this section.

(7) Shall provide ESR proof that each and every ~~((approved service provider))~~ ASP has garage keepers liability insurance coverage with minimum liability limits of fifty thousand dollars. Liability covered shall include, but not be limited to, damage to lessee's vehicle and personal property while in the care and/or custody of the ~~((approved service provider))~~ ASP. Further shall provide ESR proof that each and every ~~((approved service provider))~~ ASP has completed operations insurance coverage with minimum liability limits of one million dollars per occurrence, and two million dollars aggregate. Liability covered shall include, but not be limited to, defects in materials and workmanship during installation, removal, service, calibration, and monitoring. All such insurance must be provided by a company ~~((licensed))~~ authorized to offer such coverage in the state, and such company shall include the state of Washington as an additional insured, and shall agree to notify ESR not less than thirty days before expiration or termination of such coverage. Insurance coverage required in this subsection must be in addition to and not considered a replacement for coverage required in subsection (6) of this section.

(8) Shall ~~((advise))~~, if so requested by the originating court ~~((prior to removing the device under))~~, notify the originating court, if any, of the removal of a device under any circumstances other than:

(a) ~~((Completion of sentence or other terms of a court order.~~

~~((b))) Immediate device repair needs. ((NOTE: Whenever a device is removed for repair, and cannot be immediately reinstalled, a substitute device shall be utilized. Under no circumstances shall a restricted operator's vehicle be permitted to be driven without a required device.~~

~~((c)))~~ (b) Removal of the device in order to switch it to a replacement vehicle to be operated by the restricted operator.

Report of such a vehicle switch must be transmitted to the originating court within two business days of such a switch, if so requested by the originating court at the time of initial installation of the device. Report of such a vehicle switch must be transmitted to the DOL within two business days of such a switch, if so requested by the DOL. NOTE: Whenever a device is removed for repair, and cannot be immediately reinstalled, a substitute device shall be utilized. Under no circumstances shall a manufacturer or ASP knowingly permit a restricted operator to drive a vehicle not equipped with a functioning device.

AMENDATORY SECTION (Amending WSR 99-01-156, filed 12/23/98, effective 1/1/99)

WAC 204-50-130 Removal procedures. (~~((When so notified in writing by the originating court,))~~) The manufacturer or its approved service provider shall remove the device and return the vehicle in normal operating condition. The manufacturer or its (~~((approved service provider))~~) ASP shall provide any final report requested by the originating court and/or requested by DOL.